

**Illinois Department of Revenue
Regulations**

Title 86 Part 480 Section 480.125 Claims to Recover Erroneously Paid Tax

TITLE 86: REVENUE

**PART 480
HOTEL OPERATOR'S OCCUPATION TAX ACT**

Section 480.125 Claims to Recover Erroneously Paid Tax

a) The Filing of Claims

Where an operator pays Hotel Operators' Occupation Tax to the Department in error, either as a result of a mistake of fact or an error of law, the operator may file a claim with the Department upon a form which the Department prescribes and will issue on request.

b) Bearing the Burden of the Tax

In addition to proving that he did not owe the tax for which recovery is sought, the claimant must also prove that he bore the burden of the amount of such tax, either by not shifting the burden of the tax to anyone else in the first instance, or by unconditionally refunding any amounts passed on because of the tax to his customers, who bore the burden thereof.

c) Statue of Limitations

As to any claim filed with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under The Hotel Operators' Occupation Tax Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited.

d) Credit Memorandum or Refund

When any claim is allowed, the Department shall issue an assignable credit memorandum to the claimant for the amount so allowed.

e) Refunds

In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). The two most likely situations where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to

the Department in the foreseeable future, but receives a large credit memorandum which it therefore might take the claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.

f) Procedure--Incorporation by Reference

- 1) The procedure for disposing of claims and of credit memoranda shall be the same as that provided for in the Retailers' Occupation Tax Act and in Article 16 of the Retailers' Occupation Tax Regulations.
- 2) In general, the provisions of 86 Ill. Adm. Code 130: Subpart O of the Retailers' Occupation Tax Regulations (including provisions concerning interest on overpayments of tax as well as other provisions) shall apply to claims under The Hotel Operators' Occupation Tax Act. For that purpose, said Subpart O is incorporated by reference into this Regulation and made a part hereof.